

REMARKS AND ARGUMENTS

Claim 1 stands rejected under 35 U.S.C. § 112 as containing subject matter not described in the specification. It is respectfully submitted that, as amended, Claim 1 is fully supported by the specification. Applicant has replaced “reversibly attached” with “attached with nuts and bolts or screws.” In addition, Claims 1 and 3 stand rejected under section 112 as being indefinite. It is submitted that, as amended, Claims 1 and 3 are sufficiently definite and clear so as to distinctly claim the subject matter of the invention. The objectionable phrase “a like plurality of location” has been deleted from the claims. In view of the above, it is submitted that Claims 1 and 3 are in a condition for allowance. Reconsideration and withdrawal of the rejections and objections are hereby requested.

Claim 1 - 3 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gould (Pat. No. 1,790,806) in view of Miller (Pat. No. 5,328,294) and over Mayer (Pat. No. 1,570,164) in view of Miller. Applicant reurges all previous arguments made in prior Amendments.

Further, Applicant would like to emphasize to Examiner that the present invention cannot be not rendered obvious in view of Miller because Miller’s invention is not analogous prior art. As the Examiner well knows, the test is whether the invention at issue would have been obvious to one of ordinary skill in the relevant art. The Court in *In re Hans Oetiker* stated “[i]n order to rely on a reference as a basis for rejection of the applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Hans Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). It is important to “consider the reality of the circumstances—in other words, common sense—in deciding

in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” *Id.*(citations omitted).

The relevant art in the instant case is scaffolding and temporary work surfaces in a construction site context. In contrast, the relevant art surrounding Miller’s invention is Manhole Casting technology. As can well be imagined, the field of manhole casting is a very limited field indeed. In fact, there are probably a fairly limited number of companies in the United States which actually cast and produce manhole covers. There is no “reason, suggestion, or motivation” found anywhere in the analogous prior art to combine the known Manhole Casting technology of a plurality of adjustable foot members with the known art of scaffolding or temporary work surfaces in a construction site context. “That knowledge can not come from the applicant’s invention itself.” *Id.* It is respectfully submitted that Claims 1- 3 are not obvious to one of ordinary skill in the relevant art.

Finally, Applicant respectfully requests that Examiner withdraw objections to the drawings under 37 CFR 1.83(a). “Reversibly attached” has been deleted from the claims as requested by Examiner, therefore no new drawings are required.

In view of the above, it is submitted that Claims 1 - 3 are in a condition for allowance. Reconsideration and withdrawal of the rejections and objections are hereby requested. Allowance of Claims 1 - 3 at an early date is solicited.

If impediments to allowance of Claims 1 - 3 remain and a telephone conference between the undersigned and the examiner would help remove such impediments in the opinion of the examiner, a telephone conference is respectfully requested.

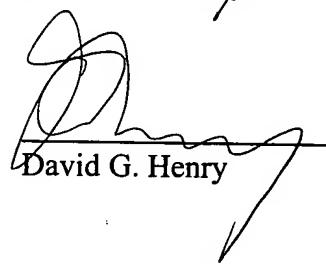
Respectfully submitted,



David G. Henry
Registration No. 32,735
900 Washington Ave.
P.O. Box 1470
Waco, TX 76703-1470
(254) 755-4234
(254) 754-6331 (Fax)
henry@namanhowell.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP NON-FEE AMENDMENT, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450, on this the 12 day of Sept.,
2004.



David G. Henry